

AN ORDINANCE ADOPTING A NEW ARTICLE 769, MOTION PHOTOGRAPHY PRODUCTION , WITHIN THE BUSINESS AND TAXATION CODE; REQUIRING MOTION PHOTOGRAPHY PRODUCTION PERMITS FOR MOTION PHOTOGRAPHY PRODUCTION ENDEVEAORS ON PUBLIC PROPERTY OWNED OR CONTROLLED BY OR UNDER THE JURISDICTION OF THE CITY OF MORGANTOWN.

The City of Morgantown hereby ordains that a new Article 769 is added to the Business and Taxation Code which reads as follows:

**ARTICLE 769
MOTION PHOTOGRAPHY PRODUCTION**

769.01 PURPOSE.

The purpose of this Article is to establish a permitting process for motion photography production endeavors on public property owned or controlled by or under the jurisdiction of the City of Morgantown. This Article does not exempt an applicant from other City Code Provisions that may pertain to the motion photography production endeavor.

769.02 DEFINITIONS.

The following words, terms and phrases, when used in this article, shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) "City" means the City of Morgantown.
- (b) "City equipment" means any tangible property, other than real property, purchased by public funds and utilized in the normal course and scope of providing governmental service by the City.
- (c) "City facility" means any public street, sidewalk, place or building owned or controlled by or under the jurisdiction of the city to include, but not limited to, city parks and recreation facilities, city hall, the police station, central communications center, all fire stations, central services warehouse.
- (d) "Motion photography" means the commercial, non-personal taking or making of a motion picture, television, videotape, or film production utilizing city equipment or utilizing city facilities. This term shall include, and a production permit shall be required for, such productions on private property, not a studio, involving the erection of tents or other temporary structures or involving the use of pyrotechnics, explosives, or other incendiary devices. This term shall not include the shooting of film at studios constructed for such purpose where no city equipment or city facilities are involved and shall not include any news, news feature, or documentary production.
- (e) "Person" means an individual, corporation, partnership or any other group acting as a unit.
- (f) "Production Permit" (also referred to herein as "Permit") means the permit required by this Article.

769.03 PERMIT AUTHORIZATION.

The City Manager or his/her designee is hereby authorized to act as the agent for the City in the receipt and processing of applications for production permits. After review and approval by appropriate City Administration, including the Fire Marshal, the Police Chief, and the City Manager, the City Manager or his/her designee shall issue the permit.

The permit authorized in this Article will not eliminate the need to acquire permits that are required in different Sections of the City Code, including NFPA 140, the city and state's code standard on Motion Picture and Television Production Studio Soundstages, Approved Production Facilities, and Production Locations. All applicants will be expected to be familiar with this code and apply for permits accordingly. Examples of additional permits that may be required include, but are not limited to, permits for pyrotechnics, explosives, or other incendiary devices, grading, and building and construction.

769.04 PERMIT REQUIRED; SUSPENSION OR REVOCATION.

- (a) No person shall advertise, engage in, participate in, or start any motion photography production unless a production permit shall have been obtained from the City Manager or his/her designee.
- (b) Failure to comply with the terms and conditions of the production permit once issued shall be grounds for immediate suspension of the production until such time as the noncompliance is remedied. The suspension shall be initially communicated orally, followed by a written suspension order. Continued failure to comply with the terms and conditions of the production permit may result in revocation of the permit. Revocation or suspension procedure will be carried out by the City Manager or his/her designee. No person shall continue production in violation of the suspension or revocation.

769.05 APPLICATION FOR PERMIT.

- (a) Any person seeking the issuance of a production permit shall file an application in the Office of the City Manager on forms provided by the City. Said application shall be filed not more than 180 days before, and not less than thirty working days before the commencement of production. The application shall be signed, under oath, by an authorized representative of the applicant.
- (b) The application shall contain the following information:
 - (1) Locations of the production.
 - (2) Duration and type of production.
 - (3) Proof of policy of liability insurance, or bond, in which the City is named as an additional insured for a combined single limit of \$1,000,000.
 - (4) Special effects to be utilized, especially incendiary or explosive devices, with proof of \$5,000,000 liability insurance therefore. In addition, the application shall list the person in charge of such

special effects together with his/her qualifications and licensing by applicable federal and state agencies.

- (5) An Agreement to indemnify and hold harmless the City of Morgantown will also be required.
- (6) Proposed utilization of City equipment.
- (7) Necessity for closures of public streets or sidewalks and for what duration.
- (8) A written summary or explanation of the portion of the production to be shot within the City.
- (9) Number and type of vehicles or equipment and number of personnel to be on location with the production.
- (10) An agreement to pay for any extraordinary services provided by the City.
- (11) Certificate signed under oath that the footage shot on public property shall not contain nudity and will not be pornographic in nature.
- (12) Any additional information that shall be reasonably deemed necessary by the City Manager or his/her designee.

769.06 RESTORATION.

If some or all of a motion photography production is to take place on public property and the production involves the erection of temporary structures or temporary modification of an existing structure or the introduction of an object or substance onto the property, the applicant for the production permit shall be required to restore the property to the condition existing prior to the production. In addition, the City may require that the applicant provide a performance bond in an amount to be determined by the City, to insure such restoration.

769.07 COSTS FOR EXTRAORDINARY SERVICES.

The City shall recover direct costs for extraordinary services rendered in connection with a production. Such costs shall include, but not be limited to, charges for personnel and equipment committed in support of the production which are outside the normal scope of government services. Based on the information contained in the permit application, an estimate of these costs will be provided to the applicant prior to issuance of the permit. The City may require prepayment of all or a portion of these estimated costs prior to issuance of the permit. At the conclusion of the production, actual costs below or in excess of the estimates will be refunded by the City or paid by the applicant, respectively. The City is under no obligation to provide City personnel or equipment, and such will be provided only if the City Manager or his/her designee approves.

769.08 PERMIT FEE.

Upon filing an application for a production permit, the applicant shall pay a sum of five dollars (\$5.00), and the payment of such sum shall be a prerequisite to the processing of the permit application.

769.09 VIOLATION PENALTIES.

- (a) It shall be in violation of this ordinance to film, tape, or act out on or near any City facility any act or acts that would portray exploding body parts or the dismemberment of bodies or body parts of humans or animals.
- (b) It shall be unlawful for a person, firm or corporation to be in conflict with or in violation of any of the provisions of this Article. Any person who shall violate a provision of this Article, or fail to comply therewith, or with any of the requirements thereof, shall be fined not more than five hundred dollars (\$500.00). Each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any provision of this Article is committed or continued.
- (c) The imposition of the penalties herein prescribed shall not preclude the City from instituting an appropriate action or proceeding to prevent the continuation of activity that is in violation of this Article.

769.10 PERIOD OF VALIDITY; RENEWALS

Any Production Permit issued under the provisions of this Article shall be valid for a period of six months from and after the date it is issued. If the motion photography production has not been completed within six months from the date of such permit, the same may be renewed for an additional period of six months without assessment of any fee therefore. If any motion photography production is not actually begun within six months after the date of the original permit therefore, no renewal permit shall be granted, but a new application therefore shall be made and an additional fee paid.

769.11 SEVERABILITY.

The provisions of this ordinance are severable. If any provision of this ordinance or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED: